

**ESKO PUBLIC SCHOOLS**Post Office Box 10  
Esko, Minnesota 55733

Fax: 218-879-7490

Randy Bowen  
*Esko High School Principal*  
[218] 879-4673James W. Schwartz  
*Superintendent*  
[218] 879-2969William D. Hoffman  
*Winterquist Elementary Principal*  
[218] 879.3361Robert Thompson  
*Athletic Director*  
[218] 879-1909 or [218] 879-4673**RECEIVED**

January 15, 2003

JAN 21 2003

Federal Communications Commission  
Office of the Secretary  
445 - 12<sup>th</sup> Street, S.W.  
Room TW-A325  
Washington, DC 20554Federal Communications Commission  
Office of the Secretary

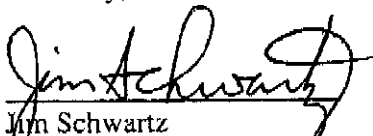

Dear Sir or Madam:

As a result of the FCC order 02-339 released on **January 7, 2003**, in the matter of the Implementation of Interim Filing **Procedures** for Filings of Requests for Review from CC **Docket** No. 96-45, we are forwarding documentation to you as proof that our appeal was sent to you within the time limits required.

Our original appeal to the FCC relating to a denial by the Schools and Library Division was sent by certified US mail to you on November 20, 2001.

Please return by **fax**, verification of the receipt of this second appeal. Our **fax** number is (218)-879-7490.

Sincerely,

  
Jim Schwartz  
Superintendent of Schools  
Esko Public Schools  
Richard Singpiel  
Technology Coordinator  
Esko Public Schools.

Enclosures:

Copy of FCC Appeal Mode of Delivery Receipt  
Copy of **FCC** Appeal  
Copy of SLD Appeal and Related AttachmentsNo. of Copies rec'd 1  
List ABCDE

Esko Public Schools  
Appeal Letter

**RECEIVED**

JAN 21 2003

Federal Communications Commission  
Office of the Secretary

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
7000 1530 0002 8132 3708	
Postage	\$ 103
Certified Fee	210
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Total Postage & Fees	\$ 463
<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; border-radius: 50%; padding: 10px; text-align: center; margin-right: 10px;">             ESKO MN 55733 NOV 20 2001 USPS           </div> <div>             Postmark           </div> </div>	
Sent To Federal Communications Office Street Apt. No. or PO Box No. City, State, ZIP+ 4	
PS Form 3800, May 2000 <span style="float: right;">See Reverse for Instructions</span>	

**Esko Public Schools**  
 2 E Highway 61  
**Esko, MN 55733**  
 November 20,2001

Federal Communications Commission  
 Office of the Secretary  
 445 - 12<sup>th</sup> Street, S.W.  
**Room TW-A325**  
 Washington, DC 20554

Dear Sir or Madam:

On November 12,2001 we received notice that the Schools and Library Division had denied our appeal for year 4 e-rate funding. Since our case is very similar to the appeal from St. John Central School (CC Docket Nos. 96-45, 97-21) being heard before the FCC, we feel that our appeal should not have been put on hold until the St. John Central School appeal was decided by the FCC. The following is a recap of the information that was sent to SLD in our first attempt at an appeal:

Applicant Name:	<b>Esko School District</b>	
Billed Entity Number:	<b>133666</b>	
<b>471</b> Application Number:	Funding Year 4	<b>07/01/01 - 06/30/2002</b>
Funding Request Numbers:	538750	<b>\$1,140</b>
	<b>538791</b>	<b>\$90</b>
	<b>538452</b>	<b>\$17,419</b>
	<b>538456</b>	<b>\$4,500</b>
	<b>538465</b>	<b>\$3,600</b>
	<b>530629</b>	<b>\$6,600</b>
Contact Name:	Richard Singpiel	
Title:	Technology Coordinator	
Address:	2 East Highway 61	
Address:	<b>Esko, MN 55733</b>	
Phone Number:	<b>218-879-2969</b>	
Fax Number:	<b>218-879-7490</b>	
E-mail Address:	<b>dsingpiel@esko.k12.mn.us</b>	

We recently received postcards notifying us that our **471** application block 6 certification was postmarked after the filing window closed and therefore both of our entire year 4 applications will not be funded. Upon investigation here is what we found

**Our 470** applications were submitted on-line on December 6<sup>th</sup> and December 11<sup>th</sup>, 2000.  
**Our 471** applications were submitted on-line on January 5<sup>th</sup> and January 9<sup>th</sup>, 2001.

Signature pages were sent to our school office on January 11 to mail out certified mail. Actual pages were not brought to the post office until January 21

The mailing of the signature pages two days later than the closing of the window was an unintentional error, possibly due to a lack of understanding by office staff on the impending deadline.

In all of the year 4 processing, we complied with the SLD rules and guidelines every step of the way. Posting our 470 to the web site for no less than 28 days while waiting for bids, selecting the vendor and even entering and posting our 471 nine days prior to the close of the window. Would we have gone to all of this work if we had not intended to comply with all of the rules and deadlines?

According to the Funds For Learning web site, we find that St. John Central School is appealing the same decision based on the fact that the E-Sign Act should cover e-rate applications. A precedent has been set by the FCC in allowing other transactions to be handled by on-line submission without requiring a subsequent signature page. In addition, according to the appeal by St. Johns School District, Section 104(c) of the E-Sign act prohibits state and federal agencies from imposing or reimposing any requirement that a record be in a tangible printed or paper form. The only exception to this rule is if there is a compelling government interest relating to law enforcement or national security. E-Rates certainly do not affect national security or law enforcement.

With this in mind, we ask that you reverse the denial by the SLD until such a time as the St. John Central School appeal is decided. The error on our part was unintentional and not one of a material nature. SLD had all of the pertinent information for processing our request, and if not for the late receipt of our certification page, our application would have been successful.

Thank you so much for your serious consideration and please contact us with any further information you may need.

Respectfully,

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Jim Schwartz  
Superintendent of Schools  
Esko Public Schools

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Richard Singpiel  
Technology Coordinator  
Esko Public Schools

Enclosures:

- Copy of denial post cards
- Copy of our post office receipt
- Copy of St. John Central School Appeal

Law Offices

DOCKET FILE COPY ORIGINAL

**HOLLAND & KNIGHT LLP****RECEIVED****AUG 9 2001****FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**2099 Pennsylvania Avenue, N.W.  
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FAX 202-955-5564  
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West Palm BeachSao Paulo  
Tel Aviv\*  
Tokyo

August 9, 2001

DAVID A. O'CONNOR  
202-828-1889Internet Address:  
doconnor@hklaw.com**VIA HAND DELIVERY**Magalie Roman Salas, Esq.  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room TW-B204  
Washington, DC 20564Re: St. John Central School  
*Request for Review*  
CC Docket Nos. 96-45/97-21  
Billed Entity No. 50794  
Form 471 Application No. 239561

Dear Ms. Salas:

Transmitted herewith, on behalf of St. John Central School ("St. John"), are an original and four (4) copies of its Request for Review of the decision of the Schools and Libraries Division ("SLD") in the above-captioned proceeding. For the reasons set forth in the Request for Review, St. John is requesting that the Commission direct SLD to accept St. John's application as having been filed during the SLD's January 2001 filing window.

To expedite the filing of this application, the Declaration page included with this filing is a facsimile. The original Declaration will be forwarded under separate cover as soon as it is received by this office.

An extra copy of this filing is enclosed. Please date-stamp the extra copy and return it to the courier for return to me.

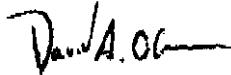
No. of Copies 054  
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**Magalie Roman Salas, Esq.**  
**August 9, 2001**  
**Page 2**

**Should you have any questions concerning this matter, please contact the undersigned.**

**Respectfully submitted,**

**HOLLAND & KNIGHT LLP**



**David A. O'Connor**  
**Counsel for St. John Central School**

**Enclosure**

**cc: Universal Service Administrative Company**  
**Schools and Libraries Division**  
**Box 125 - Correspondence Unit**  
**80 South Jefferson Road**  
**Whippany, NJ 07981**

**WAS1 #1003153 v1**



typed her **name** in the "Certification and Signature" section of Block 6.<sup>1</sup> The **SLD** confirmed electronic receipt of the application **on January 12, 2001**.<sup>2</sup> However, Ms. **Flesher** did not mail **the** original signature page to SLD until January 19, 2001, **one** day after the **filing** window closed.

On **July 10, 2001**, SLD sent a postcard to **St. John** indicating that the application was received after the **January 18** window closed.<sup>3</sup> It appears that **SLD's sole reason for making such** a determination **was** that the printed **signature** page **was** not received until **one day** after the **filing** window closed. SLD indicated that because **the** application was considered late-filed, the application would **be** held pending final processing of those applications filed during **the** window. SLD further stated that **it had** not **yet** determined whether late-filed applications **would** be considered for discount **funding**. Applications that **are** received **outside** of the filing **window** are subject to separate funding priorities under the Commission's **rules**.<sup>4</sup>

Because it is **highly** unlikely that **applications** that are considered **to** have been received outside the **filing window will result in the receipt of any E-rate** funding, **and** because SLD erred in determining **that St. John's application** was late-filed, **St. John** now **files** this timely **appeal** of the **SLD** decision to the **Commission**.

## **II. The E-Sign Act Prohibits SLD from Requiring a Paper Signature Page.**

**St. John** submits that the SLD is prohibited ~~from~~ rejecting the **St. John** application **for failure** to submit **an** original signature **during** the **filing window**, and

<sup>1</sup> See Exhibit 1 attached hereto.

<sup>2</sup> See *id.*

<sup>3</sup> See Exhibit 2 attached hereto.



**in fact** is prohibited from requiring a paper signature page at all. The basis for this assertion is the **E-Sign Act**, which **was** signed into law last **year**.

On June 30, 2000, President Clinton signed **into law** the Electronic Signatures in Global and National Commerce **Act, S. 761 ("E-Sign Act")**. The **E-Sign Act** went into effect on October 1, 2000. The **SLD's Form 471** for Year **4 is** dated October 2000 and therefore is subject to **the E-Sign Act**.

The **E-Sign Act** states, in pertinent part:

**Section 101. General Rule of Validity.**

(a) **IN GENERAL.** Notwithstanding **any** statute, regulation, or other rule of law . . . with respect to **any transaction** in or affecting interstate or foreign commerce -

(1) **a signature**, contract, or other record relating to **such transaction may not** be denied **legal effect**, validity, or enforceability solely because **it is** in electronic form; and

(2) a contract relating to such **transaction** may **not be** denied legal effect, validity, or enforceability solely **because an** electronic signature or electronic record **was used in its** formation.

Thus, the Act specifically provides **that** applications can **be filed** electronically **in lieu of** being filed in paper form, **and** that electronic signatures **cannot** be denied legal effect **simply** because they **were not filed** in paper format.

In this **instance**, **SLD specifically** requested applicants **to complete** the "Certification and Signature" block **as** part of **the** electronic Form **471** application.

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\* 47 C.F.R. § 54.507(g).

Ms. Flesher, St. John's representative, did so and filed the electronic application during the filing window. Because St. John's electronic Form 471 contained the legally binding electronic signature of St. John's representative, Ms. Flesher, St. John submits that SLD was prohibited under the E-Sign Act from requiring St. John to subsequently submit a signature page in paper form.<sup>5</sup> Accordingly, St. John cannot be punished for failure to comply with an impermissible SLD rule. The Commission should therefore direct SLD to deem St. John's application as having been timely received during the filing window.<sup>6</sup>

In addition, Section 104(c) of the E-Sign Act prohibits state and Federal agencies from imposing or reimposing "any requirement that a record be in a tangible printed or paper form." The only exception to this rule is if there is a "compelling government interest relating to law enforcement or national security" and imposing a paper requirement is essential to attaining that interest.<sup>7</sup>

Clearly in this situation there is no such compelling government interest relating to law enforcement. First, SLD is not a law enforcement agency and lacks law enforcement powers. Second, and more importantly, the prevention of fraud is not a sufficient justification for requiring original signature pages, because such a justification would undermine the very purpose of the E-Sign Act. The Act is

<sup>5</sup> Furthermore, there is some evidence that the Administrative Procedure Act requires the instructions to Form 471 to be published in the *Federal Register* in order to be effective. St. John questions the validity of the SLD's original signature requirement if the instructions to Form 471 were not published in the *Federal Register*.

<sup>6</sup> This case should be distinguished from previous Commission decisions that were decided prior to the enactment of the E-Sign Act. See, e.g., *Application of Bruggemeyer Memorial Library*, Order, 14 FCC Rcd. 13,170 (1999). In that case, the Commission denied a request for review by an applicant who filed its Form 471 electronically and faxed the signature page to the SLD but did not submit the original signature page to the SLD until after the filing window closed. St. John submits that the E-Sign Act invalidates the rationale underpinning the *Bruggemeyer* decision.

designed to legitimize electronic signatures; if Congress intended the prevention of fraud to be a compelling interest justifying an original signature page, Congress would not have enacted the law in the first place.

Finally, it is worth noting that pursuant to former Section 64.1160(b) of the FCC's rules, 47 C.F.R. § 64.1160(b), the FCC required long distance carriers to obtain the written signature of new customers. In September 2000, in reaction to the E-Sign Act, the FCC began permitting electronic signatures without the need for the submission of original signatures.<sup>8</sup> As an agent of the FCC, SLD should not maintain stricter standards than the FCC itself.

## II. Nothing of Value Is Gained by the Original Signature Page Requirement.

As a separate matter, St. John submits that the SLD's paper submission requirement serves no useful purpose and should not be required. By inserting a representative name and submitting the Form 471 application electronically, the signatory for St. completed the "Certification and Signature" portion of the form. The signatory thus certified that the information contained in the application was accurate and indeed the school was thus bound by that certification. Therefore, nothing is gained by a redundant requirement that applicants print out and submit a paper signature to the SLD.

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<sup>8</sup> E-Sign Act, § 104(b)(3)(B)

See 47 C.F.R. § 64.1120(c)(1); see also *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, FCC 00-255 (rel. Aug. 15, 2000) (Letters of Agency may be submitted electronically, without any written original signature requirement). In the decision, the FCC specifically cites as authority the E-Sign Act.